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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,399	08/28/2000	John F. Travers	29939/30002	7200

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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 01/13/2003

18 1/2

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/649,399

Applicant(s)

TRAVERS ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This final Office action is in response to the arguments filed December 9, 2002 (Paper No. 18).

Status of the Claims

Claims 5-8 and 16 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims 1, 3, 9, 10, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Halvorsen '366.

Halvorsen '366 discloses an assembly comprising a dish drainer (B) and a discrete and separate tray (A - see Figure 2); the dish drainer (B) having a perforate base (b) and a perimeter wall extending upward therefrom and thereby defining an interior (see Figure 1); the assembly further comprising a silverware compartment (C) which is detachable from the assembly and which is sized to fit entirely within the interior of the drainer; the compartment (C) having locking components (at C) which are locked together with locking components (ends of D) of tray (A) when the compartment is attached to the tray; the tray (A) includes at least one hinge (see Figure 2 where D meets A) so that the tray can be folded about the hinge to position the tray in the deployed position, i.e., Figure 2; the tray (A) being positionable in a first deployed position (see Figure 1) whereby the tray is disposed beneath the drainer and the tray having a footprint

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larger than the base of the drainer and in a second storage position (see Figure 5) whereby the tray fits entirely within the interior of the drainer.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

As previously indicated, claims 2, 4, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorsen '366, alone.

Halvorsen '366 discloses the assembly as advanced above.

The claims differ from Halvorsen '366 in requiring: (a) the tray to be plastic (claims 2 and 4); (b) the tray to have a living hinge; and (c) the locking components to define a plurality of holes which receive a plurality of pegs.

With respect to (a), although Halvorsen '366 discloses the assembly being made from metal, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the tray from plastic for ease in economy and manufacture.

With respect to (b), although Halvorsen '366 does not disclose the use of a living hinge, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the tray with a living hinge (disposed between D and A) for ease in assembly and manufacture.

With respect to (c), although Halvorsen '366 shows the locking components defining a tab disposed on the tray and a plate disposed on the compartment, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have

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provided the tray with a peg and the compartment with a hole, to thereby increase securement of the compartment when attached to the tray.

As previously indicated, claims 13-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorsen '366 in view of Todd '054.

Halvorsen '366 discloses the assembly as advanced above.

The claims differ from Halvorsen '366 in requiring a package (claim 13) defining a folding carton (claim 14).

Todd '054 teaches that it is old in the art to utilize a folding carton to package an assembly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the assembly of Halvorsen '366 with a package sized to contain the assembly in the stored position (Figure 5) thereby allowing for ease in shipping of the assembly.

As previously indicated, claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Halvorsen '366 as applied to claims 1, 3, 9, 10, and 12 above, and further in view of Kaufman *et al.* '984.

Halvorsen '366 discloses the assembly as advanced above.

The claims differ from Halvorsen '366 in requiring a package (claim 18) defining plastic film (claim 19).

Kaufman *et al.* '984 teach that it is old in the art to utilize plastic film to package an assembly.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the assembly of Halvorsen '366 with a package sized to contain the assembly in the stored position (Figure 5) thereby allowing for ease in shipping of the assembly.

Response to Arguments

Applicants' arguments filed December 9, 2002 (Paper No. 18) have been fully considered but they are not persuasive.

Applicants' arguments (in the second full paragraph on page 2) that "Halvorsen does not teach or suggest a tray that can collect, contain and redirect water, much less a tray having a first deployed configuration or a second storage configuration in which the tray is positionable entirely within the interior of the dish drainer", are acknowledged. It is noted that the features upon which applicant relies (i.e., collecting, containing, and redirecting water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). *However*, this argument is directed to a recitation of the intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. *Finally*, regarding applicants' arguments that A of Halvorsen "does not have a first deployed configuration or a second storage configuration... the legs of A are not positioned entirely within the colander B", it is noted that the element A, and just element A, i.e., not elements a, have been defined by the examiner to define the 'tray' as called for in the instant claims. *Therefore*, the fact

that elements "a" are not positioned entirely within the interior of the tray "A" is irrelevant since it can be seen from Figure 5 that the tray "A" is positioned entirely within the interior space.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen
January 9, 2003

A handwritten signature in black ink that reads "Daniel P. Stodola". The signature is written in a cursive style with a large, looped initial "D".

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600